



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 17-2

January 26, 2018

Petition of CoxCom, Inc. d/b/a Cox Communications to establish and adjust the basic service tier programming, equipment, and installation rates for the Town of Holland.

RATE ORDER

APPEARANCE:

PETITIONER

Robert Howley
COXCOM, INC. d/b/a COX COMMUNICATIONS
9 James P Murphy Highway
West Warwick, RI 02893

AND

Alan D. Mandl, Esq.
Law Office of Alan D. Mandl
90 Glezen Lane
Wayland, MA 01778
FOR: COXCOM, INC. d/b/a COX COMMUNICATIONS

I. INTRODUCTION

In this Order, the Department of Telecommunications and Cable (“Department”) approves the amended petition of CoxCom, Inc. d/b/a Cox Communications (“Cox” or “Company”), in which Cox seeks to establish maximum permitted rates (“MPR”) and Operator Selected Rates (“OSR”) proposed for basic service tier (“BST”) equipment and installation for the Town of Holland, Massachusetts (“Rate Schedule”). Attachment 1 to this Order lists these approved rates. Additionally, the Department approves Cox’s refund plan for consumers impacted by an installation billing error.

II. PROCEDURAL HISTORY

Cox filed Federal Communications Commission (“FCC”) Form 1205 with the Department on January 27, 2017, in which Cox proposed equipment and installation MPRs for the Town of Holland.¹ In its FCC Form 1205, Cox proposed to maintain or decrease the MPRs for each of its equipment and installation rates. *See* Exh. 1. Pursuant to FCC regulations, Cox’s proposed equipment and installation rates became effective on May 1, 2017. 47 C.F.R. § 76.933(g). Cox did not file an FCC Form 1240 for the prior year so there was no change to the BST programming rate the Department approved in D.T.C. 16-1. Tr. at 22-23; *see also Petition of CoxCom, Inc. d/b/a Cox Commc’ns to establish & adjust the basic serv. tier programming, equip., & installation rates for the Town of Holland*, D.T.C. 16-1, *Rate Order* (Jan. 26, 2017) (“D.T.C. 16-1 Order”).

On September 19, 2017, the Department issued a Notice of Public Hearing, Order of Notice, and Letter Notice to the Town of Holland.

¹ Citations to Cox’s FCC Form 1205 filed on January 27, 2017, are to “Exh. 1”. Citations to the revised FCC Form 1205 are to RR-1 – Form 1205.

On October 24, 2017, the Department held public and evidentiary hearings on Cox's proposed rates.² There were no members of the public at the public hearing and no parties intervened in this proceeding. Tr. at 4. At the hearing, Cox submitted proof of publication of the hearing notice. *Id.* at 4-5. Cox further detailed its good faith efforts to communicate with Holland about posting at town hall and cablecasting the hearing notice. *Id.* at 8-9, 16. The Department issued two record requests during the evidentiary hearing. *Id.* at 9, 22, 24. Cox submitted its responses to those record requests on November 4, 2017.³

Prior to the hearing Cox's counsel informed the Department of an error on the Company's FCC Form 1205. Cox inadvertently used the average hours per unwired home installation for the calculation of its prewired home installation rate, resulting in the OSR for prewired home installations exceeding the MPR. Tr. at 7. During the hearing Cox stated that it was in the process of determining the refund amount. *Id.* Cox submitted a corrected FCC Form 1205, a corrected proposed rate summary, and offered further detail on its plan to provide overcharged customers with a credit. *See* RR-1. On December 21, 2017, Cox filed a refund plan. Letter from Alan Mandl, Counsel, Cox, to Sara Clark, Sec'y, Dep't (Dec. 21, 2017) ("Refund Plan").

The evidentiary record for this proceeding consists of the original FCC Form 1205 and Rate Summary as the two exhibits from Cox, the transcripts of the public and evidentiary hearings, two Department record requests and Cox's responses, and Cox's proposed refund plan related to the prewired installation amount.

III. ANALYSIS AND FINDINGS

² Citations to the public and evidentiary hearing transcript are to "Tr. at [page]."

³ Citations to the Department's record requests and Cox's responses are to "RR-1" and "RR-2."

After review and consideration, the Department approves Cox's FCC Form 1205, as amended November 4, 2017, and finds the proposed rates to be reasonable in accordance with and subject to the Department's findings below. A summary of the approved rates can be found in the Rate Schedule enclosed as Attachment 1.

Cable operators use FCC Form 1205 to calculate rates for installations and equipment, such as converters and remote controls, based upon actual capital costs and expenses. *FCC Form 1205 Instructions for Determining Costs of Regulated Cable Equip. and Installation* (June 1996) ("*FCC Form 1205 Instructions*"), at 1, (June 1996). A cable operator prepares its FCC Form 1205 on an annual basis using information from its previous fiscal year. *Id.* at 2. In this proceeding, the Department reviewed Cox's FCC Form 1205 for the fiscal year ending December 31, 2015. *See* Exh. 1.

Subscriber charges established by FCC Form 1205 may not exceed charges based on actual costs. 47 C.F.R. § 76.923(a)(2). The cable operator has the burden to demonstrate that its proposed rates for equipment and installations comply with Section 623 of the Communications Act and the FCC's implementing regulations. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(a); *In re Implementation of Sections of the Cable Television Consumer Prot. & Competition Act of 1992: Rate Regulation*, 8 FCC Rcd. 5631, 5716-17, *Report & Order & Further Notice of Proposed Rulemaking* (1993). With regard to equipment and installation rates, Cox has chosen to aggregate its costs at the New England System level. Tr. at 17.

The Department first examines the changes in Cox's MPRs for installations and equipment. As part of this examination, the Department reviews the information and calculations Cox reported on its FCC Form 1205 and the accompanying explanation of the calculations. The Department also considers Cox's responses to Department inquiries and

testimony from the evidentiary hearing. As set forth below, the Department finds that Cox's amended FCC Form 1205 establishes MPRs for installations and equipment that are in compliance with applicable law. *See* 47 C.F.R. § 76.923.

Cox has proposed decreasing its MPR for: addressable converters from \$2.20 to \$1.72; DTAs from \$1.74 to \$1.23; prewired homes installation from \$26.87 to \$18.37; additional outlet at and after initial installation from \$32.25 to \$22.05; and digital installation and unwired homes installation, both from \$69.87 to \$51.46. *Compare D.T.C. 16-1 Order* at Attach. 1, *with* RR-1 – Form 1205. The proposed MPR for remotes remains at \$0.12. *Compare D.T.C. 16-1 Order* at Attach. 1, *with* RR-1 – Form 1205.

As part of its examination, the Department requested elaboration on the cause of Cox's installation billing error. *See* Tr. at 9-11. Cox stated that the error was the result of Cox using the average hours per an unwired home installation for the calculation of its pre wired home installation rate. *Id.* at 7. This error resulted in an original OSR of \$24.00 which was higher than the corrected MPR of \$18.37. RR-1. Cox acknowledged that a refund would be necessary and estimated less than 100 subscribers were impacted by the original OSR of \$24.00. *Id.* The revised OSR revealed an overcharge of \$5.63 per installation. *See id.* Further, Cox estimated the total refund amount to be less than \$500.00. *Id.* On December 21, 2017, Cox proposed refunding subscribers with a credit on each impacted subscriber's billing statement, including interest. Refund Plan. Cox stated that it applied these refunds to each impacted subscriber's account on December 6, 2017. *Id.*

The Department approves Cox's refund plan. The plan presented by Cox to the Department makes the impacted subscribers whole. The Department finds this refund plan is

reasonable and accurately reflects the incorrect billing amount charged to subscribers for installation.

With the billing error identified above addressed by the billing credit, the Department finds Cox's revised FCC Form 1205, as amended November 4, 2017, for the Town of Holland is reasonable and prepared in accordance with FCC Regulations. *See* 47 C.F.R. §§ 76.923, 76.924. Specifically, the Department finds Cox's explanations, methodologies, and calculations in its amended Form 1205 to be in accord with federal rules. *See* 47 C.F.R. §§ 76.923, 76.924. Cox has also completed the FCC Form 1205 in accordance with the general instructions provided by the FCC. *See FCC Form 1205 Instructions* at 3. Accordingly, the Department accepts Cox's explanations and current methodologies and calculations used to determine installation- and equipment-related costs.

The Department next considers Cox's OSRs for equipment and installations. Cox did not include its proposed OSRs on its FCC Form 1205; rather, the Company included a Proposed Rate Summary document with its FCC Form 1205 filing. *See* Exh. 2; RR-1 – Rate Summary. Cox proposed to either decrease or maintain its equipment and installation OSRs. *See* RR-1 – Rate Summary. Cox's proposed OSRs, as amended, are each below the corresponding MPR. *See* RR-1– Rate Summary. After examination of Cox's FCC Form 1205 and Cox's responses to the Department's inquiries in this proceeding, the Department accepts the Company's proposed OSRs, as amended, to be in compliance with applicable law. *See* 47 C.F.R. § 76.923(a)(2).

The Department concludes that Cox's amended FCC Form 1205 establishes MPRs for installations and equipment that are in compliance with applicable law, and that Cox's OSRs for installations and equipment do not exceed its MPRs. *See id.* The Department finds Cox's proposed rates to be reasonable and approves Cox's amended FCC Form 1205. *See* 47 U.S.C. §

543; G.L. c. 166A, § 15. A summary of the approved equipment and installation rates can be found in the enclosed Rate Summary. *See* Attachment 1.

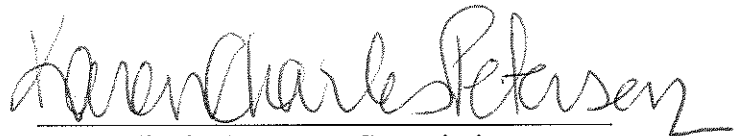
IV. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That the MPRs for equipment and installations listed on Cox's FCC Form 1205, as amended November 4, 2017, and the proposed OSRs are APPROVED; and it is

FURTHER ORDERED: That Cox's refund plan, filed on December 21, 2017, is APPROVED.

By Order of the Department

A handwritten signature in cursive script, reading "Karen Charles Peterson", written over a horizontal line.

Karen Charles Peterson, Commissioner

RIGHT OF APPEAL

Pursuant to G.L. c. 25, § 5, and G.L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court. Appeals of Department Orders on basic service tier cable rates, associated equipment, or whether a franchising authority has acted consistently with the federal Cable Act may be brought to the Federal Communications Commission pursuant to 47 C.F.R. § 76.944.